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U.S. Citizenship
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Services

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FILE:

SRC 05 211 52168

Office: TEXAS SERVICE CENTER

Date:

MAR 22 2008

IN RE:

Petitioner:

Beneficiary:

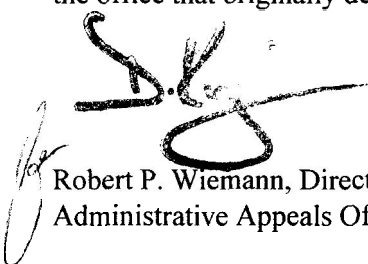
PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained; the petition will be approved.

The petitioner is an electronic document technology business. It seeks to employ the beneficiary permanently in the United States as an application developer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not meet the job requirements set forth on the labor certification.

On appeal, the petitioner submits a new employment letter.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level. The equivalent of an advanced degree is either a U.S. baccalaureate or foreign equivalent degree followed by at least five years of “progressive experience” in the specialty. 8 C.F.R. § 204.5(k)(2).

The beneficiary holds a baccalaureate degree in a field relevant to the position sought plus more than five years of experience. The issue is whether the beneficiary’s experience is “progressive.” Initially, the petitioner submitted two employment letters. [REDACTED] asserts that the beneficiary was a “previous colleague who worked for [REDACTED] from 1995 to 1999.” According to Mr. [REDACTED] the beneficiary worked full-time as a software developer. François Leblanc, Director of Silanis, confirms that the beneficiary worked there from November 1999 to December 2004 as a full-time software developer.

On August 11, 2005, the director requested evidence that the beneficiary’s experience was progressive. In response, the petitioner resubmitted the letter from Mr. [REDACTED]. The director concluded that the record did not establish that the beneficiary made progress or advancement toward increasingly complex or responsible duties. On appeal, the petitioner submits new letters from Mr. [REDACTED] and Mr. [REDACTED]. Mr. [REDACTED] asserts that while at [REDACTED] the petitioner “became a senior C++ developer.” Mr. [REDACTED] asserts that “in addition to his initial responsibilities, [the beneficiary] gradually took on the responsibility of assisting in the overall development of the software architecture as well as the design of sub-systems of the products he was working on.”

On appeal, counsel references a March 20, 2000 memorandum, Educational and Experience Requirements for Employment-Based Second Preference (EB-2) Immigrants, from [REDACTED] Acting Associate Commissioner for the Office of Programs and William Yates, Deputy Executive Associate Commissioner for the Office of Field Operations. On page 3, the memorandum states:

It is reasonable to infer that highly technical positions are progressive in nature due to the constant state of change in their respective industries. This is not to say, however,

that five years of post-baccalaureate experience in a highly technical position automatically translates to an advanced degree in every case. As with any adjudication, a petition seeking classification for an EB-2 advanced degree professional should be decided on a case-by-case basis.

The beneficiary works in a highly technical position. Thus, we can infer that his experience was progressive. The letters submitted on appeal confirm such an inference.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The decision of the director dated September 6, 2005, is withdrawn. The appeal is sustained and the petition is approved.